

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 PSD QUEENS DRIVE LP; MICHAEL )  
 KREKSTEIN AND ELLEN KESSLER )  
 FIRST, CO-EXECUTORS OF THE )  
 ESTATE OF STANLEY KESSLER; )  
 ELLEN KESSLER FIRST AND JANICE )  
 K. BIRON, CO-EXECUTORS OF THE )  
 ESTATE OF THELMA KESSLER; )  
 MORTON KLEVAN, BEATRICE )  
 KLEVAN, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Civil Action No. \_\_\_\_\_

**COMPLAINT**

The United States of America ("United States"), by authority of the Attorney General and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

**PRELIMINARY STATEMENT**

1. This is a civil action under Sections 106, 107 and 113(b) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. §§ 9606, 9607 and 9613(b). This is an action against Defendants related to the Stanley Kessler Superfund Site ("Site"), located in Montgomery County, Commonwealth of Pennsylvania ("Pennsylvania"). The United States seeks (a) continued performance of response activities at the Site based upon

the remedial action set forth in the Record of Decision ("ROD"), dated September 30, 1994, as modified in 2003, and (b) further recovery of response costs incurred and costs to be incurred by the United States in response to the release or threat of release of hazardous substances in connection with the Site. The United States also seeks a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), on liability that will be binding in future actions to recover further costs incurred at or in connection with the Site.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1345 and 42 U.S.C. §§ 9606(a), 9607, and 9613(b).

3. Venue is proper in this judicial district pursuant 28 U.S.C. § 1391(b) and (c) and 42 U.S.C. § 9613(b), because the Site is located in this judicial district and the claims arose in this district.

### **DEFENDANTS**

4. Defendant PSD Queens Drive LP ("PSD Queens") is a limited partnership that was established in the State of Delaware. Defendant PSD Queens conducts business in Pennsylvania and is the current owner of the Site.

5. Defendants Morton Klevan and Beatrice Klevan were part owners of the Site or held an ownership interest in it at times relevant to this Complaint.

6. Defendants Michael Krekstein and Ellen Kessler First are sued in their capacities as co-executors of the Estate of Stanley Kessler. Prior to his death and at times relevant to this Complaint, Stanley Kessler owned a portion of the Site or held an

ownership interest in it. In addition, prior to his death, defendant Stanley Kessler conducted a business at the Site. At the time of his death in 1998, Stanley Kessler's ownership interest in the Site passed to his Estate.

7. Defendants Ellen Kessler First and Janice K. Biron are sued in their capacities as co-executors of the Estate of Thelma Kessler. Prior to her death and at times relevant to this Complaint, Thelma Kessler owned a portion of the Site or held an ownership interest in it. At the time of her death in 2000, Thelma Kessler's ownership interest in the Site passed to her Estate.

8. Each Defendant falls within the definition of a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

### **GENERAL ALLEGATIONS**

#### **A. The Site**

9. The Site, consisting of approximately 3.21 acres, is located in the King of Prussia, Montgomery County, Pennsylvania.

10. Between approximately 1962 and 1976, the Stanley Kessler Company ("Kessler Company") operated at the Site. Kessler Company's activities conducted at the Site included at least degreasing, cleaning, and respooling welding wire.

11. The wire degreasing, cleaning, and related activities conducted at the Site included the use of solvents. Solvents used at the Site contained trichloroethene ("TCE") and trichloroethane ("TCA"), both of which are hazardous substances.

12. As a result of the wire degreasing, cleaning and related activities conducted at the Site, TCE and TCA were released into the environment, including into

soil and groundwater at the Site.

13. At times relevant to this Complaint, solvents containing TCE and TCA dripped or leaked onto the floor and entered into floor drains in a building where the degreasing and cleaning activities occurred. Such solvents entered into a septic tank and then into a concrete cesspool, which had no bottom that separated it from the ground. TCE and TCA entered into soil and groundwater.

14. Solvent sludge, which contained TCE and TCA, was poured or dumped or otherwise entered into floor drains at the Site, and TCE and TCA entered into the ground around the area of the building where the degreasing and cleaning activities occurred.

**B. Response Actions In Connection with The Site**

15. In 1979, monitoring wells installed at the Site revealed the presence of TCE and TCA in groundwater at the Site. Sampling also confirmed the presence of TCE and TCA in soil and groundwater at the Site.

16. In December 1982, the Site was placed on the National Priorities List.

17. A remedial investigation and feasibility ("RI/FS") was conducted at the Site, commencing in or about July 1992.

18. EPA issued a ROD for the Site in September 1994. The ROD selected a long-term remedy for addressing contaminated groundwater at the Site.

19. On September 30, 1994, EPA issued a Unilateral Administrative Order ("UAO") to Stanley Kessler and the Kessler Company, which is now defunct, requiring them to implement the remedy selected in the ROD for addressing groundwater contamination at the Site. Stanley Kessler and the Kessler Company complied with the

UAO.

20. In or about 2003, EPA determined that the remedy which was being implemented pursuant to the ROD and UAO needed to be modified. Defendants agreed to implement the slightly modified remedy and have done so since approximately 2003.

21. EPA, the Agency for Toxic Substances and Disease Registry, and the Department of Justice have undertaken response activities in connection with the Site, including, but not limited to, assessments, monitoring, planning, and enforcement related activities.

22. The United States has incurred response costs of at least \$676,436 in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604. The United States' response costs were incurred in a manner not inconsistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300.

### **CLAIMS FOR RELIEF**

#### **FIRST CLAIM FOR RELIEF**

23. The United States realleges and incorporates by reference paragraphs 1 through 22, above, as if fully set forth below.

24. The September 30, 1994, ROD, selected a remedy for the Site to address contaminated groundwater at the Site. The ROD also required, *inter alia*, implementation of institutional controls in order to protect the implemented remedy.

25. Based upon one or more assessments, sampling events and/or studies, EPA determined that an actual or threatened release of hazardous substances from the

Site, if not addressed by implementing the remedy selected in the ROD, may present an imminent and substantial endangerment to the public health, welfare, or the environment.

26. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), as amended, provides in pertinent part:

. . . when the President [as duly delegated to EPA] determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court . . . shall have jurisdiction to grant such relief as the public and the equities of the case may require.

27. Defendants are liable parties under CERCLA, and the United States is entitled to an order, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), requiring Defendants to continue to implement the remedy selected by EPA in the September 30, 1994 ROD for the Site, as modified in 2003.

### **SECOND CLAIM FOR RELIEF**

28. The United States realleges and incorporates by reference paragraphs 1 through 27, above, as if fully set forth below.

29. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as amended, provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

(1) the owner and operator of a vessel or facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, . . . , shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan; . . . .

30. TCE and TCA are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

31. TCE and TCA found in groundwater at or near the Site were released or threatened to be released into the environment within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22). TCE and TCA were disposed of at the Site. Solvents, containing TCE and TCA, leaked or dripped onto the floor and entered into floor drains, and solvent waste, containing TCE and TCA, was poured or dumped into floor drains.

32. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

33. To protect the public health, welfare and the environment from the actual or threatened release of a hazardous substance into the environment from the Site, the Administrator of EPA, pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), has undertaken response activities with respect to the Site that are not inconsistent with the NCP, including investigations, monitoring, assessing, testing, and enforcement related activities.

34. Defendant PSD Queens is liable under Section 107(a) (1) of CERCLA, 42 U.S.C. § 9607(a) (1), as an owner or operator of the Site.

35. Defendants Morton and Beatrice Klevan are liable under Section 107(a) (2) of CERCLA, 42 U.S.C. § 9607(a) (2), as an owner or operator of the Site at the time hazardous substances were disposed of at the Site.

36. Defendants Michael Krekstein and Ellen Kessler First, in their capacities as co-executors of the Estate of Stanley Kessler, are liable under Section 107(a) (2) of CERCLA, 42 U.S.C. § 9607(a) (2), as an owner or operator of the Site at the time hazardous substances were disposed of at the Site.

37. Defendants Ellen Kessler First and Janice K. Biron, in their capacities as co-executors of the Estate of Thelma Kessler, are liable under Section 107(a) (2) of CERCLA, 42 U.S.C. § 9607(a) (2), as an owner or operator of the Site at the time hazardous substances were disposed of at the Site.

38. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), Defendants are jointly and severally liable for all response costs incurred and to be incurred by the United States with respect to the Site.

#### **PRAYER FOR RELIEF**

WHEREFORE, the United States requests that the Court enter a judgment against Defendants, jointly and severally, as follows:

A. Enter a judgment against Defendants, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), requiring Defendants to continue to implement the remedy selected by EPA in the September 30, 1994 ROD, as modified in 2003.

B. Enter a judgment against Defendants, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607, finding Defendants liable for the United States' response costs, including Interest thereon, incurred in connection with the Site, and



Order Defendants to pay such costs and Interest;

C. Enter a declaratory judgment as to Defendants' liability that will be binding in future actions to recover further response costs incurred by the United States in connection with the Site; and

D. Award the costs of this action to the United States and Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

MATTHEW J. MCKEOWN  
Acting Assistant Attorney General  
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Division  
Department of Justice

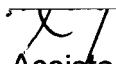
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